REMARKS

The Office Action and the cited and applied reference have been carefully reviewed. No claim is allowed. Claims 1 and 15-29, with claims 15-19 and 24-25 being non-elected and withdrawn, presently appear in this application and define patentable subject matter warranting their allowance. Reconsideration and allowance are hereby respectfully solicited.

Applicant believes that the prior art rejections relating to TNFα peptides are now overcome as discussed below. As a sequence search of nonelected SEQ ID NOs:2, 3, 4, 25, 26, 37 and 38 was already previously conducted by the examiner, applicant requests that the examiner consider the patentability of these specific nonelected peptide sequences in view of the previous sequence search. New claims 26 and 27 use closed "consisting of" language for the peptide sequence.

A new title of the invention is being required because the word "novel" is not considered as part of the title of the invention. This requirement is however respectfully traversed because the amendment filed May 31, 2007, amended the title to "PEPTIDES FOR ACTIVE ANTI-CYTOKINE IMMUNIZATION".

Reconsideration and withdrawal of this requirement are therefore respectfully requested.

Claims 1, 14 and 20-23 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. This rejection is obviated by the amendment to claim 1.

Reconsideration and withdrawal of the rejection are therefore respectfully requested.

Claims 1, 14 and 22 have been rejected under 35 U.S.C. §102(a) and 102(e) as being anticipated by U.S. Patent 6,440,694. The examiner states that US'694 teaches a peptide fragment of TNFα which is 100% identical to the peptide of the amino acid sequence set forth in SEQ ID NO:7 contained in an amino acid fragment 24 amino acids in length. These two rejections are respectfully traversed and are addressed together below.

US'694 reports the discovery in the human genome of a new gene, designated TRDL, which shares some homology (only 17% with TNFα) with the family of cytokines that includes TNFα. Two TRDL isoforms, TRDL-11 and TRDL-14, are disclosed and the use of these molecules taught in US'694 are directed primarily to the use of the corresponding genetic sequences for diagnostic tests or for expression of the protein isoforms in various cell types.

The present claims are amended to all be directed to an immunizing composition containing a peptide as an active ingredient instead of merely an isolated peptide. As US'694 does not teach any therapeutic immunization or any immunizing composition whatsoever, US'694 cannot be considered to anticipate the present claims.

Furthermore, the 24 residue sequence which contains fifteen residues identical with the fifteen residues of SEQ ID NO:7 corresponds to SEQ ID NO:5 of US'694. The only reference to SEQ ID NO:5 in the disclosure of US'694 is at column 6, lines 26-33, where interesting regions of homology were observed between the coding region of clone 78258 and TNFα. Fig. 1A is disclosed as showing one such region of homology. Therefore, it is clear to one of ordinary skill in the art

reading US'694 that Fig. 1A is merely showing a region of homology within the larger sequences of clone 78258 and TNFα, rather than a distinct and separate peptide.

The sequence listing in US'694 not only incorrectly reverses the sequences of SEQ ID NOs:5 and 6 but further erroneously refers to the region of homology in TNFα as a "peptide" under "molecule type". Such an inaccurate designation is likely inadvertent due to the limited choices available for "molecule type" in preparing a sequence listing using software. Nevertheless, the region of homology in TNFα is not disclosed in US'694 as a separate and distinct peptide fragment and was never isolated or intended as such by US'694.

> MPEP 716.07 "Inoperability of References" states:
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> Compare *In re Yale* 434 F.2d 66, 168 USPQ 46 (CCPA 1970) (Correspondence from a co-author of a literature article confirming that the article misidentified a compound through a typographical error that would have been obvious to one of ordinary skill in the art was persuasive evidence that the erroneously typed compound was not put in possession of the public. (emphasis added)

Like the situation in *In re Yale*, it is obvious to one of ordinary skill in the art reading the disclosure of US'694 that the sequence listing misidentified what is clearly disclosed in the specification as merely a region of homology within a larger full length sequence as a "peptide" in designating the "molecule type". Therefore, such an obvious and clear error does not put a 24 residue "peptide" containing instant SEQ ID NO:7 in possession of the public. Accordingly, US'694 cannot anticipate the presently claimed invention.

Reconsideration and withdrawal of the rejection are therefore respectfully requested.

In view of the above, the claims comply with 35 U.S.C. §112 and define patentable subject matter warranting their allowance.

Favorable consideration and early allowance are earnestly urged.

Respectfully submitted,

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